MOTION FILED
JUN 7 1979

IN THE

Supreme Court of the United States

October Term, 1979

No. 78-952

RANDAL RUSH, *et al.*,

Appellants,

against

JEFFREY D. SAVCHUK,

Respondent.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA.

Motion by the New York State Trial Lawyers Association to File Brief *Amicus Curiae* on Behalf of Respondent [redacted]

ABRAHAM FUCHSBERG
250 Broadway
New York, N. Y. 10007
(212) 962-2800

PROFESSOR PERRY S. REICH
NEW YORK LAW SCHOOL
57 Worth Street
New York, N. Y. 10013
(212) 966-3500

Attorneys for Movant

Table of Cases.

	Page
Donawitz v. Danek, 42 N.Y.2d 138, 397 N.Y.S.2d 592, 366 N.E.2d 253 (1977)	2
Farrell v. Piedmont Aviation, 411 F.2d 812 (2d Cir.), cert. denied 396 U.S. 840 (1969)	2
Fish v. Bamby Bakers, Inc., 76 F.R.D. 511 (N.D.N.Y. 1977)	2
O'Connor v. Lee-Hy Paving Corp. (579 F.2d 194, 195)	2
Seider v. Roth (17 N.Y.2d 111, 269 N.Y.S.2d 99, 216 N.E.2d 312 [1966])	1, 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979.

RANDAL RUSH, *et al.*,

Appellants,

against

JEFFREY D. SAVCHUK,

Respondent.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA.

Motion by the New York State Trial Lawyers Association to File Brief *Amicus Curiae* on Behalf of Respondent and to Participate in Oral Argument.

The New York State Trial Lawyers Association (NYSTLA) hereby respectfully moves for leave to file a brief *amicus curiae* in this case in support of respondents, and leave to participate in oral argument, as provided for in Rules 42 and 44 of this Court. The consent of the attorneys for the parties has not been obtained.

NYSTLA is primarily an organization of trial attorneys practicing in the state and federal courts in New York, having a total membership of approximately 2,500. Its members frequently litigate cases in which jurisdiction has been obtained in accordance with the procedures outlined by the New York Court of Appeals in *Seider* v. *Roth* (17 N.Y.2d 111, 269 N.Y.S.2d 99, 216 N.E.2d 312

[1966]), i. e., by the attachment of the obligation of insurers licensed to do business in New York to defend nonresident defendants and to pay damages recovered against them. Consequently, the basic issue posed in this case, which concerns the constitutionality of those procedures, is of the deepest concern to NYSTLA and has implications extending far beyond the particular situation now pending before the Court.[1] NYSTLA, as the principal spokesman for the trial lawyers of New York State, was granted permission to present its views on this subject to the United States Court of Appeals for the Second Circuit in *O'Connor* v. *Lee-Hy Paving Corp.* (579 F.2d 194, 195), a case in which this Court denied certiorari on December 9, 1978 (99 S.Ct. 639) and rehearing on April 16, 1979.

Respondent's brief necessarily concentrates on the peculiar facts of the Minnesota statute. In the brief we propose to tender, the problem will be treated in more generic fashion. Specifically, we intend to emphasize certain significant factors in the history of the doctrine of *Seider* v. *Roth (supra),* the seminal case in New York, particularly the long-term reliance attorneys have placed on its validity and the widespread effect of a "retroactive" holding on pending litigation; the "collateral estoppel" effect of a judgment obtained in this manner—a matter that has troubled two Justices of this Court (see

[1]In *O'Connor* v. *Lee-Hy Paving Corp.* (579 F.2d 194, 199 n. 6 [2d Cir. 1978], cert. denied U.S. , 99 S.Ct. 639, reh. den. U.S.), Judge Friendly noted that the particular factual context of *Savchuk* v. *Rush* might not support a retention of jurisdiction because the plaintiff was not a resident of the State at the time of the accident. In New York, such residence is mandated (see *Donawitz* v. *Danek,* 42 N.Y.2d 138, 397 N.Y.S.2d 592, 366 N.E.2d 253 [1977]; *Farrell* v. *Piedmont Aviation,* 411 F.2d 812 [2d Cir.], cert. denied 396 U.S. 840 [1969]; *Fish* v. *Bamby Bakers, Inc.,* 76 F.R.D. 511 [N.D.N.Y. 1977]).

opinion dissenting from denial of certiorari at 99 S. Ct. 639)—, and pertinent policy considerations, such as the right of a state to impose the obligation to submit to jurisdiction to suits on insurance companies as a condition for doing business in the state, and the use of *forum non conveniens* to alleviate any inconvenience to various witnesses and parties, which we believe the Court should take into account. We feel that our contribution along these lines may assist the Court in viewing the problems here presented in broad context, thus ensuring a fuller presentation of the grave import its decision may have for attorneys throughout the country.

We, therefore, request that the Court permit us to file a brief *amicus curiae* within a time period to be fixed by the Court and to participate in oral argument.

Respectfully submitted,

ABRAHAM FUCHSBERG,
250 Broadway,
New York, New York 10007
212 962-2800.

PROF. PERRY S. REICH,
New York Law School,
57 Worth Street,
New York, New York 10013
212 966-3500.
Attorneys for Movant.

see

7 8

1 0 7 8